

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLAYTON THOMAS : CIVIL ACTION
:
v. :
:
BEN VARNER, et al. : NO. 02-4778

O R D E R

AND NOW, this day of , 2003,
respondents' time for filing objections to the Report and
Recommendation of Magistrate Charles B. Smith, that the
writ of habeas be granted is extended to October 20, 2003.

BY THE COURT

BRUCE W. KAUFFMAN
United States District Court Judge

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**MOTION TO CLARIFY MAGISTRATE'S GRANT OF ENLARGEMENT OF TIME TO
FILE OBJECTIONS TO REPORT AND RECOMMENDATION ENTERED
SEPTEMBER 29, 2003**

LYNNE ABRAHAM, District Attorney of Philadelphia County,
by HELEN KANE, Assistant District Attorney, and THOMAS W. DOLGENOS, Chief,
Federal Litigation, respectfully requests an enlargement of time in which to file
objections to the Report and Recommendation of Magistrate Charles B. Smith
recommending that the writ of habeas corpus be granted in the above habeas corpus
case and, in support thereof, states:

1. On September 29, 2003, Magistrate Judge Charles B. Smith entered a
Report and Recommendation that the writ of habeas corpus be granted in the above
case on the single claim that trial counsel was ineffective for not having moved to
suppress and/or strike the identification testimony of eyewitness Peter Fuller. The
Magistrate Judge also enlarged the time for filing objections from ten days to October
20, 2003.

2. Under the rules for computing time, the time period that the applicable
rules set for the filing of objections to a dispositive order of a Magistrate Judge is due to

expire on October 14, 2003. F.R.Civ.Pro. 72(b); F.R.A.P. 26(a).

3. While the Local Rules providing for reconsideration and appeal in civil matters permit a Magistrate Judge to enlarge the time for filing of objections to the Magistrate Judge's order in non-dispositive matters, Local Rule 72.1 IV(a), the rule governing review of case-dispositive matters, which the instant ruling may come within, is silent as to whether the Magistrate Judge may enlarge the time for filing objections thereto. In an abundance of caution, the Commonwealth seeks to ensure that the deadline for filing objections is indeed October 20, 2003.

4. The Commonwealth is currently awaiting receipt of notes of testimony to complete its objections to the Report and Recommendation which it expects to file on October 20, 2003, the date set by the Magistrate Judge. To ensure that the time for filing objections to the Report and Recommendation of the Magistrate Judge is extended beyond the ten day period otherwise set for the filing of objections, the Commonwealth requests that this Court extend the time for filing objections to the Report and Recommendation to October 20, 2003, as set by the Magistrate Judge.

WHEREFORE, the Commonwealth requests an enlargement of time for filing objections to the Report and Recommendation of the Magistrate Judge to October 20, 2003.

Respectfully submitted,

HELEN KANE
Assistant District Attorney
THOMAS W. DOLGENOS
Chief, Federal Litigation

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CERTIFICATE OF SERVICE

I, HELEN KANE, hereby certify that on October 14, 2003, a copy of the foregoing pleading was served by placing same, first class postage prepaid, in the United States Mail addressed to:

Magistrate Judge Charles B. Smith
United State Court House, Room 3006
601 Market Street
Philadelphia PA 19106

Daniel Silverman, Esquire
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